

(10) Shipments for which the USPPI has not been approved for postdeparture filing.

(b) *Filing deadlines for EEI transmitted predeparture.* The USPPI or the authorized agent shall file the required EEI and have received the AES ITN no later than the time period specified as follows:

(1) For USML shipments, refer to the ITAR (22 CFR 120 through 130) for specific requirements concerning predeparture filing time frames. In addition, if a filer is unable to acquire an ITN because the AES is not operating, the filer shall not export until the AES is operating and an ITN is acquired.

(2) For non-USML shipments, file the EEI and provide the ITN as follows:

(i) For vessel cargo, the USPPI or the authorized agent shall file the EEI required by §30.6 and provide the filing citation or exemption legend to the exporting carrier twenty-four hours prior to loading cargo on the vessel at the U.S. port where the cargo is laden.

(ii) For air cargo, including cargo being transported by Air Express Couriers, the USPPI or the authorized agent shall file the EEI required by §30.6 and provide the filing citation or exemption legend to the exporting carrier no later than two (2) hours prior to the scheduled departure time of the aircraft.

(iii) For truck cargo, including cargo departing by Express Consignment Couriers, the USPPI or the authorized agent shall file the EEI required by §30.6 and provide the filing citation or exemption legend to the exporting carrier no later than one (1) hour prior to the arrival of the truck at the United States border to go foreign.

(iv) For rail cargo, the USPPI or the authorized agent shall file the EEI required by §30.6 and provide the filing citation or exemption legend to the exporting carrier no later than two (2) hours prior to the time the train arrives at the U.S. border to go foreign.

(v) For mail and cargo shipped by other methods, except pipeline, the USPPI or the authorized agent shall file the EEI required by §30.6 and provide the filing citation or exemption legend to the exporting carrier no later than two (2) hours prior to exportation.

(See §30.46 for filing deadlines for shipments sent by pipeline.)

(vi) For all other modes, the USPPI or the authorized agent shall file the required EEI no later than two (2) hours prior to exportation.

(3) For non-USML shipments when the AES is unavailable, use the following instructions:

(i) If the participant's AES is unavailable, the filer must delay the export of the goods or find an alternative filing method;

(ii) If AES or *AESDirect* is unavailable, the goods may be exported and the filer must:

(A) Provide the appropriate down-time filing citation as described in §30.7(b) and Appendix D; and

(B) Report the EEI at the first opportunity AES is available.

(c) *EEI transmitted postdeparture.* Postdeparture filing is only available for approved USPPIs and provides for the electronic filing of the data elements required by §30.6 no later than ten calendar days from the date of exportation. For USPPIs approved for postdeparture filing, all shipments (other than those for which predeparture filing is specifically required), by all methods of transportation, may be exported with the filing of EEI made postdeparture. Certified AES authorized agents or service centers may transmit information postdeparture on behalf of USPPIs approved for postdeparture filing, or the approved USPPI may transmit the data postdeparture itself. However, authorized agents or service centers will not be approved for postdeparture filing.

(d) *Proof of filing citation and exemption and exclusion legends.* The USPPI or the authorized agent shall provide the exporting carrier with the proof of filing citation and exemption and exclusion legends as described in §30.7.

§30.5 Electronic Export Information filing application and certification processes and standards.

Prior to filing EEI, the USPPI or the authorized agent must be certified to file through the AES. A service center shall be certified to transmit electronically to the AES. The USPPI, authorized agent, or service center may use a

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software package designed by a certified vendor to file EEI through the AES. Once an authorized agent has successfully completed the certification process, any USPPI using that agent does not have to be certified. The certified authorized agent shall have a properly executed power of attorney or written authorization from the USPPI or FPPI, and be physically located in the United States to file EEI through the AES. The USPPI or authorized agent that utilizes a certified software vendor or service center shall complete certification testing. Service centers may only transmit export information; they may not prepare and file export information unless they have authorization from the USPPI in the form of a power of attorney or written authorization, thus making them authorized agents. The USPPI seeking approval for postdeparture filing privileges shall be approved before they or their authorized agent may file on a postdeparture basis.

(a) *AES application process*—(1) *AES Participation Application*. The USPPI or authorized agent who chooses to file through the AES and seek approval for postdeparture filing privileges, must submit a complete on-line LOI at <http://www.census.gov/aes>.

(2) *AESDirect registration*. The USPPI or authorized agent who chooses to file through *AESDirect* shall also complete the online *AESDirect* registration form at <http://www.aesdirect.gov>. After submitting the registration, an *AESDirect* filing account is created for the filing company. The person designated as the account administrator is responsible for activating the account and completing the certification process as discussed in paragraph (b)(2) of this section.

(b) *Certification process*—(1) *AES certification process*. The USPPI or authorized agent shall perform an initial two-part communication test to ascertain whether its system is capable of both transmitting data to, and receiving data from, the AES. The USPPI or authorized agent shall demonstrate specific system application capabilities. The capability to correctly handle these system applications is the prerequisite to certification for participation in the AES. The USPPI or author-

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ized agent shall successfully transmit the AES certification test. CBP's and/or Census Bureau's client representatives provide assistance during certification testing. These representatives make the sole determination as to whether or not the USPPI or authorized agent qualifies for certification. Upon successful completion of certification testing, the USPPI's or authorized agent's status is moved from testing mode to operational status. The AES filers may be required to repeat the certification testing process at any time. The Census Bureau will provide the AES filer with a certification notice after the USPPI or authorized agent has been approved for operational status. The certification notice will include:

(i) The date that filers may begin transmitting data;

(ii) Reporting instructions; and

(iii) Examples of the required AES proof of filing citations, postdeparture filing citations, AES downtime filing citation, and exemption legends.

(2) *AESDirect certification process*. To become certified for *AESDirect*, filers shall demonstrate knowledge of this part and the ability to successfully transmit EEI. Upon successful completion of the certification testing, notification by e-mail will be sent to the account administrator when an account is fully activated for filing via *AESDirect*. Certified filers should print and retain the page congratulating the filer on passing the test.

(c) *Postdeparture filing approval process*. The USPPI may apply for postdeparture filing privileges by submitting a postdeparture filing application at <http://www.census.gov/aes>. An authorized agent may not apply on behalf of a USPPI. The Census Bureau will distribute the LOI to CBP and the other federal government partnership agencies participating in the AES postdeparture filing review process. Failure to meet the standards of the Census Bureau, CBP or any of the partnership agencies is reason for denial of the AES applicant for postdeparture filing privileges. Each partnership agency will develop its own internal postdeparture filing acceptance standards, and each agency will notify the Census Bureau of the USPPI's success

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or failure to meet that agency's acceptance standards. Any partnership agency may require additional information from USPPIs that are applying for postdeparture filing. The Census Bureau will notify the USPPI of the decision to either deny or approve their application for postdeparture filing privileges within thirty (30) calendar days of receipt of the postdeparture filing application by the Census Bureau, or if a decision cannot be reached at that time, the USPPI will be notified of an extension for a final decision as soon as possible after the thirty (30) calendar days.

(1) *Grounds for denial of postdeparture filing status.* The Census Bureau may deny a USPPI's application for postdeparture filing privileges for any of the following reasons:

(i) There is no history of filing for the USPPI through the AES.

(ii) The USPPI's volume of EEI reported through the AES does not warrant participation in postdeparture filing.

(iii) The USPPI or its authorized agent has failed to submit EEI through the AES in a timely and accurate manner.

(iv) The USPPI has a history of non-compliance with the Census Bureau export regulations contained in this part.

(v) The USPPI has been indicted, convicted, or is currently under investigation for a felony involving a violation of federal export laws or regulations and the Census Bureau has evidence of probable cause supporting such violation, or the USPPI is in violation of Census Bureau export regulations contained in this part.

(vi) The USPPI has made or caused to be made in the LOI a false or misleading statement or omission with respect to any material fact.

(vii) The USPPI would pose a significant threat to national security interests such that its participation in postdeparture filing should be denied.

(viii) The USPPI has multiple violations of either the EAR (15 CFR 730 through 774) or the ITAR (22 CFR 120 through 130) within the last three (3) years.

(2) *Notice of denial.* A USPPI denied postdeparture filing privileges by other agencies shall contact those agencies

regarding the specific reason(s) for nonselection and for their appeal procedures. A USPPI denied postdeparture filing status by the Census Bureau will be provided with a specific reason for nonselection and a Census Bureau point of contact in an electronic notification letter. A USPPI may appeal the Census Bureau's nonselection decision by following the appeal procedure and reapplication procedure provided in paragraph (c)(5) of this section.

(3) *Revocation of postdeparture filing privileges—(i) Revocation by the Census Bureau.* The Census Bureau may revoke postdeparture filing privileges of an approved USPPI for the following reasons:

(A) The USPPI's volume of EEI reported in the AES does not warrant continued participation in postdeparture filing;

(B) The USPPI or its authorized agent has failed to submit EEI through the AES in a timely and accurate manner;

(C) The USPPI has made or caused to be made in the LOI a false or misleading statement or omission with respect to material fact;

(D) The USPPI submitting the LOI has been indicted, convicted, or is currently under investigation for a felony involving a violation of federal export laws or regulations and the Census Bureau has evidence of probable cause supporting such violation, or the AES applicant is in violation of export rules and regulations contained in this part;

(E) The USPPI has failed to comply with existing export regulations or has failed to pay any outstanding penalties assessed in connection with such non-compliance; or

(F) The USPPI would pose a significant threat to national security interests such that its continued participation in postdeparture filing should be terminated.

(ii) *Revocation by other agencies.* Any of the other agencies may revoke a USPPI's postdeparture filing privileges with respect to transactions subject to the jurisdiction of that agency. When doing so, the agency shall notify both the Census Bureau and the USPPI whose authorization is being revoked.

(4) *Notice of revocation.* Approved postdeparture filing USPPIs whose

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postdeparture filing privileges have been revoked by other agencies shall contact those agencies for their specific revocation and appeal procedures. When the Census Bureau makes a determination to revoke an approved USPPI's postdeparture filing privileges, the USPPI will be notified electronically of the reason(s) for the decision. In most cases, the revocation shall become effective when the USPPI has either exhausted all appeal procedures, or thirty (30) calendar days after receipt of the notice of revocation, if no appeal is filed. However, in cases judged to affect national security, revocations shall become effective immediately upon notification.

(5) *Appeal procedure.* Any USPPI whose request for postdeparture filing privileges has been denied by the Census Bureau or whose postdeparture filing privileges have been revoked by the Census Bureau may appeal the decision by filing an appeal within thirty (30) calendar days of receipt of the notice of decision. Appeals should be addressed to the Chief, Foreign Trade Division, U.S. Census Bureau, Washington, DC 20233-6700. The Census Bureau will issue a written decision to the USPPI within thirty (30) calendar days from the date of receipt of the appeal by the Census Bureau. If a written decision is not issued within thirty (30) calendar days, the Census Bureau will forward to the USPPI a notice of extension within that time period. The USPPI will be provided with the reasons for the extension of this time period and an expected date of decision. The USPPIs who have had their postdeparture filing status denied or revoked may not reapply for this privilege for one year following written notification of the denial or revocation.

(d) *Electronic Export Information filing standards.* The data elements required for filing EEI are contained in § 30.6. When filing EEI, the USPPI or authorized agent shall comply with the data transmission procedures determined by CBP and the Census Bureau and shall agree to stay in complete compliance with all export rules and regulations in this part. Failure of the USPPI or the authorized agent of either the USPPI or FPPI to comply with these requirements constitutes a violation of the

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regulations in this part, and renders such principal party or the authorized agent subject to the penalties provided for in Subpart H of this part. In the case of *AESDirect*, when submitting a registration form to *AESDirect*, the registering company is certifying that it will be in compliance with all applicable export rules and regulations. This includes complying with the following security requirements:

(1) *AESDirect* user names, administrator codes, and passwords are to be kept secure by the account administrator and not disclosed to any unauthorized user or any persons outside the registered company.

(2) Registered companies are responsible for those persons having access to the user name, administrator code, and password. If an employee with direct access to the user name, administrator code, and password leaves the company or otherwise is no longer an authorized user, the company shall immediately change the password and administrator code in the system to ensure the integrity and confidentiality of Title 13 data.

(3) Antivirus software shall be installed and set to run automatically on all computers that access *AESDirect*. All *AESDirect* registered companies will maintain subscriptions with their antivirus software vendor to keep antivirus lists current. Registered companies are responsible for performing full scans of these systems on a regular basis, but not less than every thirty (30) days, to ensure the elimination of any virus contamination. If the registered company's computer system is infected with a virus, the company shall contact the Census Bureau's Foreign Trade Division Computer Security Officer and refrain from using *AESDirect* until it is virus free. Failure to comply with these requirements will result in immediate loss of privilege to use *AESDirect* until the registered company can establish to the satisfaction of the Census Bureau's Foreign Trade Division Computer Security Officer that the company's computer systems accessing *AESDirect* are virus free.

(e) *Monitoring the filing of EEI.* The USPPI's or the authorized agent's *AES* filings will be monitored and reviewed for quality, timeliness, and coverage.

The Census Bureau will provide performance reports to USPPIs and authorized agents who file EEI. The Census Bureau will take appropriate action to correct specific situations where the USPPI or authorized agent fails to maintain acceptable levels of data quality, timeliness, or coverage.

(f) *Support.* The Census Bureau provides online services that allow the USPPI and the authorized agent to seek assistance pertaining to AES and this part. For AES assistance, filers may send an e-mail to ASKAES@census.gov and for FTR assistance, filers may send an e-mail to FTDREGS@census.gov. *AESDirect* is supported by a help desk available twelve (12) hours a day from 7 a.m. to 7 p.m. EST, seven (7) days a week. Filers can obtain contact information from the Web site <http://www.aesdirect.gov>.

§ 30.6 Electronic Export Information data elements.

The information specified in this section is required for shipments transmitted to the AES. The data elements identified as “mandatory” shall be reported for each transaction. The data elements identified as “conditional” shall be reported if they are required for or apply to the specific shipment. The data elements identified as “optional” may be reported at the discretion of the USPPI or the authorized agent.

(a) Mandatory data elements are as follows:

(1) *USPPI and USPPI identification.* The name, address, identification, and contact information of the USPPI shall be reported to the AES as follows:

(i) *Name of the USPPI.* In all export transactions, the name listed in the USPPI field in the EEI shall be the USPPI in the transaction. (See § 30.1 for the definition of the USPPI and § 30.3 for details on the USPPI’s reporting responsibilities.)

(ii) *Address of the USPPI.* In all EEI filings, the USPPI shall report the address or location (no post office box number) from which the goods actually begin the journey to the port of export. For example, the EEI covering goods laden aboard a truck at a warehouse in Georgia for transport to Florida for

loading onto a vessel for export to a foreign country shall show the address of the warehouse in Georgia. For shipments with multiple origins, report the address from which the commodity with the greatest value begins its export journey. If such information is not known, report the address in state in which the commodities are consolidated for export.

(iii) *USPPI identification number.* The USPPI shall report its own IRS EIN in the USPPI field of the EEI. If the USPPI has only one EIN, report that EIN. If the USPPI has more than one EIN, report the EIN that the USPPI uses to report employee wages and withholdings, and not the EIN that is used to report only company earnings or receipts. If the USPPI does not have an EIN, the USPPI must obtain an EIN for reporting to the AES. Use of another company’s or individual’s EIN or other identification number is prohibited. The appropriate Party type code shall be reported through the AES. When a foreign entity is in the United States when the items are purchased or obtained for export, the foreign entity is the USPPI for filing purposes. In such situations, the foreign entity shall report a DUNS, border crossing number, passport number, or any number assigned by CBP.

(iv) *Contact information.* Show contact name and telephone number.

(2) *Date of export.* The date of export is the date when goods are scheduled to leave the port of export on the exporting carrier that is taking the goods out of the United States.

(3) *Ultimate consignee.* The ultimate consignee is the person, party, or designee that is located abroad and actually receives the export shipment. The name and address of the ultimate consignee, whether by sale in the United States or abroad or by consignment, shall be reported in the EEI. The ultimate consignee as known at the time of export shall be reported. For shipments requiring an export license, the ultimate consignee shall be the person so designated on the export license or authorized to be the ultimate consignee under the applicable license exemption in conformance with the EAR or ITAR, as applicable. For goods sold en route, report the appropriate “To be